must occur "only through a separate subsidiary." H.R. 1555, 104th Cong., 1st Sess. § 271(a)(1)&(2) (1995). Subsection (b)(1) then provided — as section 273(b)(1) now provides — that "[s]ubsection (a) shall not prohibit a Bell operating company from engaging in close collaboration," never mentioning a separate subsidiary requirement; while subsection (b)(2) provided that "[s]ubsection (a) shall not prohibit a Bell operating company, directly or through a[] subsidiary, from — (A) engaging in any research activities . . . , and (B) entering into royalty agreements . . . ." H.R. 1555, § 271(b)(1)&(2) (emphasis added). The House therefore applied a separate subsidiary requirement only to general manufacturing (fabrication and non-collaborative design), but not to collaborative activities, research, and royalty agreements.

The Senate likewise drew a distinction between manufacturing activities that had to be conducted through an affiliate and those that did not. The Senate bill was structured so that subsection (a) of the manufacturing provision (section 256 of S. 652) contained both a basic manufacturing rule, S. 652, 104th Cong., 1st Sess. § 256(a)(1) (1995), and a special authorization for both "research and design" and "royalty agreements," S. 652, § 256(a)(2)(A)&(B). Subsection (b) then made "[a]ny manufacturing" under (a) subject to the separate affiliate safeguard. S. 652, § 256(b); S. Rep. 104-23, at 102-03. In contrast, the provision authorizing "close collaboration" was located elsewhere (in subsection (d)), and was never subject to a separate subsidiary requirement. S. 652, § 256(d); S. Rep. 104-23, at 103.

When the bills went to conference, the structure of the House bill, and in particular the language of subsection (b), prevailed. The omission of the explicit references to subsidiaries was not a substantive change. See Conference Report, at 113 (all "differences between the Senate bill, the House amendment, and the substitute agreed to in conference" that are not "noted" in the

report were considered by the Conference Committee to be minor drafting or "clerical corrections" rather than substantive changes).[23] Both chambers had agreed that a Bell company need not collaborate with a manufacturer through a structurally separate affiliate, and there is no indication in the legislative history that anyone, at any time, suggested that it should be otherwise. The explicit references to subsidiaries were simply unnecessary, since the text of subsections (b)(1) and (b)(2) exempts those provisions from the general rule contained in section 273(a). 47 U.S.C. § 273(b)(1)&(2) ("Subsection (a) shall not prohibit . . . .").

CONCLUSION

Congress was confident that Bell company manufacturing would benefit the public, if conducted in accordance with carefully limited restrictions. TA's members, however, see their interest in blocking the very Bell company competition that Congress wanted to encourage. TA's attempt to undermine the authority granted by Congress has no grounding in the language, history, or purpose of the 1996 Act or in the legislation that preceded it. Nor does TA make a credible showing that its proposed restrictions are needed. The FCC should eschew such efforts to encumber Bell company manufacturing and allow the statute to bring about the economic benefits Congress expected.

[23] The Conference Report does not explain why the explicit references to the separate affiliate were deleted.

Overview of SBC Major Issues on CC Docket No. 96-254 - Manufacturing

1. **Implementing §273(b) (1) & (2) "Carve-Outs" to BOCs for:**
   - Close Collaboration with Manufacturers on the Design and Development of TE & CPE
   - Research activities related to manufacturing
   - Royalty agreements

Should be a simple formula:
   - Plain Language of §273(b) of the Telecom Act + 96-254 Order (as it issues) = Stand Alone Carve-Outs (exceptions to §273(a))

Versus

   - Entangled and unclear constraints proposed by TIA, if followed by FCC in issuing this Order ≠ Telecom Act grant of carved out exceptions.

"Carve-out" for §273(b) activities in a stand-alone, unencumbered way means:
-no limitation on the meaning of collaboration, research to "generic" only
-no limitation on royalty arrangements (types, grants, licensees)
-no separate subsidiary requirements
-no additional duty to disclose or nondiscrimination duties

2. **Only BOCs engaged in §273(a) FULL manufacturing activities are subject to the limitations of §272, and §273(c) and (e).**

• IF a BOC chooses to enter into FULL Manufacturing activities this would include:

- Design and Development BY ITSELF (versus closely collaborating with a Manufacturer) of TE and CPE

- Fabrication BY ITSELF of TE and CPE

- The Manufacturing BOC would conduct §273(a) activities under the limitations contained in §272 and §273 of the Act:

  - through a fully separated §272 affiliate, following §271 relief
  - information requirements in §273(c)
  - procurement requirements in §273(e)

• A NON-MANUFACTURING BOC (including one involved only in §273(b) "carve-out" activities) would NOT be subject to any of these limitations.

3. **Basis for SBC's position:**
   - Plain Language of the Act
   - Legislative Intent of Section §273
   - Benefit to Competition in Manufacturing Sector
   - Benefit to Consumers